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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,142	02/06/2006	Martin Esselbrugge	37872	6218
116 7590 11/29/2007 PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			EXAMINER MAYO, TARA L	
			ART UNIT 3671	PAPER NUMBER
			MAIL DATE 11/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/526,142

Applicant(s)

ESSELBRUGGE ET AL.

Examiner

Tara L. Mayo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20050228, 20050525</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

2. The citation on the Information Disclosure Statement filed 25 May 2005 has been lined through because it duplicates a citation on the IDS filed 28 February 2005.

Specification

3. The disclosure is objected to because of the following informalities: omitted section headings. Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 37, 42 and 55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 37, the phrase "such as, for instance" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

With regard to claim 42, the scope of the claimed invention is indefinite. Specifically, it is unclear how the envelope can be both directed toward and away from the tubular element. Accordingly, this claim has not been further treated on the merits.

The scope of claim 55 is indefinite. Specifically, Applicant fails to recite any features of the mold. Accordingly, this claim has not been further treated on the merits.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 28 through 41, 43 through 47 and 49 through 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Denison et al. (U.S. Patent No. 6,048,136).

Denison et al. '136, as best seen in Figures 4 through 6 show a suppression element (10) comprising:

with regard to claim 28,

an envelope (40); and

at least one projection (42) pointing away from the envelope;

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characterized in that the envelope is modular to form with similar suppression elements a tube at least partly enveloping a tubular element (18);

with regard to claim 29,

at least one spacer (50);

with regard to claim 30,

further comprising at least one passage;

with regard to claim 31,

wherein the passage at least partly extends through the projection;

with regard to claim 32,

wherein the passage also forms a passage for a connecting element (52);

with regard to claim 33,

wherein the passage is at a transition between the envelope and the projection;

with regard to claim 34,

wherein the surface of the projection lies at an angle equal to 90 degrees to the surface of the envelope;

with regard to claim 35,

wherein the envelope is unilaterally curved around a longitudinal direction of the suppression element;

with regard to claim 36,

wherein the envelope transverse to the longitudinal direction is substantially in the form of a circular arc;

with regard to claim 37,

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wherein the envelope forms a circular arc of 120 degrees as seen in the longitudinal direction;

with regard to claim 38,

wherein the projection extends in a longitudinal direction of the suppression element and lies at an angle (i.e., 90 degrees) to the longitudinal direction;

with regard to claim 39,

wherein the suppression element has one projection;
with regard to claim 40,

wherein the projection has a triangular cross section;
with regard to claim 41,

wherein the projection is open on a side directed toward the envelope;
with regard to claim 43,

further comprising a directing element (22);
with regard to claim 44,

wherein the directing element comprises a means for positioning the projection;
with regard to claim 45,

wherein the suppression element is manufactured from a material having a specific density lower than water (i.e., fiber glass; col. 3, lines 21 through 22);
with regard to claim 46,

wherein the material has a specific density between 800 and 900 kg/cm³;
with regard to claim 47,

at least partly manufactured from a foamed plastic;

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with regard to claim 49,

at least partly manufactured from polyethylene (col. 3, lines 36 through 41);

with regard to claim 50,

further comprising an origin marking (i.e., the apertures positioned along element 36);

with regard to claim 51,

at least two suppression elements;

with regard to claim 52,

comprising at least two suppression elements which together form a tube which in operation at least partly envelops a tubular element;

with regard to claim 53,

further comprising a flow element (as best seen in Figure 1); and

with regard to claim 54,

in combination with a platform (12).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various

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claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Denison et al. (U.S. Patent No. 6,048,136).

Denison et al. '136 fail to teach the suppression element being manufactured at least partially from reused plastic. It would have been obvious to one having ordinary skill in the art at the time of invention to make the suppression element taught by Denison et al. '136 from recycled plastic since the Examiner takes Official Notice of the use of recycled plastics for manufacturing commercial devices.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Mayo whose telephone number is 571-272-6992. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



TARA I MAYO
PRIMARY EXAMINER
Art Unit 3671

tlm
26 November 2007